

CHURCH INCORPORATION

UNDER THE

LAWS OF MASSACHUSETTS.

1891.

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Henry A. Hazen, Auburndale, Mass., at five cents a copy.

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1891.

The General Association of the Congregational Churches of Massachusetts, at the eighty-eighth annual meeting held in Holyoke, June 17-19, 1890, adopted unanimously the following preamble and resolutions :—

WHEREAS, It is believed that many of our churches would avail themselves of the opportunity offered by the statute law of our Commonwealth for church incorporation, were they aware how satisfactory the provisions of the law, and how simple and inexpensive the steps that are necessary to comply with them; therefore—

RESOLVED, That a committee of three be appointed, who shall send to each of our churches in the state a copy of the laws touching church incorporation, a statement of the steps that need to be taken, and such explanation of the process as shall seem to be necessary.

RESOLVED, That the Association urge a careful consideration of this matter by each church.

RESOLVED, That for the necessary expense of this work, said committee be allowed a sum not to exceed fifty dollars.

The following committee was appointed : Rev. Edwin H. Byington, of Springfield, Rev. Alonzo H. Quint, D.D., of Allston, and Hon. William T. Forbes, of Westboro.

REPORT.

Prior to 1887, the material affairs of our churches were controlled either by religious societies, incorporated deacons, or proprietors of meeting houses.

Members of churches, in a few instances, had been incorporated by special act of the legislature or under Chapter 115 of the Public Statutes.

But in these cases the church itself, *i. e.*, the ecclesiastical organization was not incorporated. In reality a religious corporation was formed whose membership at its incorporation might be identical with that of the church. But as these corporations were subject to the general laws governing religious societies, which allow members to withdraw at any time, and do not require any ecclesiastical qualification for membership, this might be changed. There was not necessarily any permanent identity of the church and corporation bearing the same name.

In 1887 a statute was adopted (Chapter 404 of the Acts and Resolves of 1887) providing for the incorporation of the church itself and making the membership of the corporation necessarily identical with that of the church. This law has been received with favor by the churches, many of whom have taken advantage of its provisions. *

*For list of Congregational churches incorporated under this law see Appendix A.

ACTS AND RESOLVES OF 1887, CHAPTER 404.

SECTION 1. Any church now existing or that may be hereafter organized in this Commonwealth, may be incorporated according to the provisions of this act.

SECT. 2. A notice signed by one or more of the members of such a church, stating the object, time and place of the meeting for the incorporation of the church, and the first election of officers under the provisions of this act, shall be posted in a conspicuous place near one of the principal entrances of the usual place of meeting of said church, at least fifteen days previous to the time for such meeting.

SECT. 3. The resident members of such church of twenty-one years of age and upwards may assemble at their place of worship and by ballot elect a moderator, clerk, treasurer, a standing committee* of not less than three nor more than seven members and such other officers as they may deem necessary. The clerk shall be sworn.

SECT. 4. The church may prescribe by its By-Laws the manner in which and the officers and agents by whom the purposes of its incorporation may be carried out. When no provision is made by any vote or by-law of the church for

*Amended in 1891. See page 6.

calling meetings, they shall be called in such manner as the standing committee* may direct.

SECT. 5. The standing committee* so elected shall certify the organization of such a church to the commissioner of corporations in such form as he shall prescribe, who with the secretary of the Commonwealth, upon payment of a fee of five dollars to the secretary, shall perform the same duties and with the same legal effect as in the case of corporations organized under chapter one hundred and fifteen of the Public Statutes†; and, except as provided in this act churches incorporated under the provisions of this act, shall have the same powers and privileges and shall be subject to the same duties, restrictions and liabilities as corporations established under said chapter one hundred and fifteen.

SECT. 6. None but members of such a church shall be members of any such corporation, and none but resident members of such church of twenty-one years of age and upwards shall vote.

SECT. 7. The deacons of any such church, holding real or personal estate under the provisions of chapter thirty-nine of the Public Statutes, may convey any such estate to the church of which they are deacons, if incorporated under the provisions of this act, and such estate shall thereafter be held by the church, subject to

*Amended in 1891. See page 6.

†See Appendix B.

the same uses and trusts as when held by said deacons.

SECT. 8. Any religious society connected with a church incorporated under the provisions of this act, may at any meeting in the call for which notice has been given of the object of the meeting, by a three-fourths vote, authorize one or more persons in its name and behalf to convey to such church any real or personal estate belonging to it, and such estate shall thereafter be held by the church subject to the same uses and trusts as when held by said religious society.

(As some churches wished to call this "committee of not less than three nor more than seven members" by some other name than "Standing Committee" the passage of the following amendment was secured.)

AMENDMENT ADOPTED IN 1891, CHAPTER 265.

SECTION 1. Corporations organized under Chapter 404 of the Acts of the year 1887 may have, instead of a standing committee, a board of trustees, managers, directors, executive committee, prudential committee, wardens, and vestry, or other officers with the powers of a standing committee.

SECT. 2. This act shall take effect upon its passage.

PRELIMINARY STEPS.

A church meeting should be called in the usual way to consider the desirability of becom-

ing incorporated. If the decision is favorable, a committee should be appointed to consider carefully the law and the necessary legal steps, to obtain the blanks from the commissioner of corporations at the State House in Boston, to see that the meeting is properly called, and to prepare for presentation and consideration a series of By-Laws.

(Whether a church having a "parish" or "society" shall consult that body before taking action is entirely a question of expediency. No legal requirement exists on this point, and a church with a "society" has the same liberty in seeking incorporation, and follows the same steps, as a church newly organized and without this adjunct. For the formation of a church corporation does not necessitate the extinction of the "society" nor a limitation of its functions, although often the principal reason for such incorporation would be the final absorption by the church of the functions of the "society," by consent of that body.)

The notice of the meeting at which application for incorporation is to be made (a blank form* for which the commissioner of corporations will send on application) should be posted in a conspicuous place near one of the principal entrances of the usual place of meeting of the church, at least fifteen days previous to time of the meeting.

* See Appendix C.

The call should be signed by one of the resident members of the church, of twenty-one years of age or upward.

PROCEDURE AT THE MEETING.

On assembling, the church should elect by ballot a temporary clerk, who should be sworn at once by a justice of the peace or a notary public.

All resident members of the church, without distinction of sex, of twenty-one years of age and upward, but no other persons may vote at this and subsequent meetings, and may hold office. After the election of a chairman by ballot, a motion to apply for incorporation is in order and requires only a majority vote. The motion might be put in this form : “*Resolved*, That we apply for the incorporation of this church under Chapter 404 of the Acts and Resolves of 1887, and proceed to take the necessary steps thereto.”

The By-Laws, previously prepared, should be presented for consideration and adoption. These By-Laws must include the officers mentioned in the statute.*

After this should come the election of the officers required by the statute—a moderator, clerk, treasurer, and a standing committee* of not less than three nor more than seven members ; and also such other officers as the By-Laws adopted by the church may require.

*Also see amendment, page 6.

The clerk must be sworn before he can commence his duties.

Not only should every officer required by Section 3 of this statute be elected by ballot, but that fact should be stated clearly in the records; otherwise the entire proceedings will be nullified. A vote that one person cast the ballot of the whole is illegal.

An application for incorporation (for which blank forms will be sent by the commissioner of corporations*) should be filled out and signed by a majority of the standing committee,† and sent to the commissioner of corporations with five dollars and the records. The record book itself must be sent (a certified copy of the records will not suffice) and must contain the call for the meeting with the annexed affidavit filled out, and the records of the meeting, including the By-Laws and list of officers elected. The records must be signed by the temporary clerk and clerk.

Care should be taken to have the names of church and persons, dates and places written in full and accurately. Even slight errors or omissions may necessitate going over it all from the beginning.

Though the members of the church do not attend this or any other corporation meeting they are members of the corporation, sharing all its responsibilities and privileges—except that

* See Appendix D.

† See amendment, page 6.

minors and non-residents, though members of the corporation, cannot vote and hold office.

The property of the corporation but not that of its members is liable for its financial obligations.

A by-law is desirable permitting the receiving and dismissing of members and the appointing of delegates at the regular church gatherings for worship, but requiring suitable notice of the subjects to be considered, if other business is to be transacted.

THE PROPERTY.

If the property is held by a "society" and it is desirable for the church to receive it and assume the responsibilities of the "society," a meeting of the "society" should be legally called, after the incorporation of the church is complete, with a notice of the object, and one or more persons should be authorized in its behalf and name to transfer the property to the incorporated church. If three-fourths of the members of the society present and voting support such a motion it prevails.

Conveyances to the church by the incorporated deacons, or "society," or any other party should be prepared by a lawyer or person familiar with laws relating to corporations.

If in doubt on any point, ask the commissioner.

APPENDIX A.

In 1887, twelve churches were incorporated under the provisions of this law; in 1888, 21; in 1889, 30; in 1890, 40; 1891 (nearly three months), 13—a total of 116.

On the other hand those securing incorporation under general statutes and by special acts numbered in 1887, 8; in 1888, 4; in 1889, 5; in 1890, 4—a total of 21.

Of the 116 organized under the statute of 1887 36 were Baptist and the following were Congregational (only those are given which have a place in the Year Book).

1887. Fall River, French.

Oakham.

Oxford.

Somerville, Prospect Hill.

Southboro, *Southville*.

Wilmington.

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1888. Boston, *Dorchester*, Harvard.

Boston, *Dorchester*, Bethany.

Buckland.

Holden.

Millbury, First.

Montague, *Millers Falls*.

Ware, French.

Westboro.

Worcester, Park.

—9

1889. Auburn.

Boston, Olivet.

Charlton.

Framingham, *South*.

Groveland.

Middleboro, Central.

Norfolk.

	Rockland.	
	Rowley.	
	Springfield, Eastern Avenue.	—10
1890.	Ashburnham, First.	
	Boston, <i>Charlestown</i> , Winthrop.	
	Boston, <i>Dorchester</i> , Pilgrim.	
	Concord.	
	Danvers, First.	
	Dover.	
	Framingham, First.	
	Haverhill, Riverside.	
	Hawley.	
	Hyde Park, <i>Clarendon Hills</i> .	
	Lawrence, United.	
	Milton, First.	
	Newton, <i>Highlands</i> .	
	Plymouth, Pilgrimage.	
	Springfield, Sanford St. (now called St. John's).	
	Springfield, Park.	
	Sudbury.	
	Wareham.	
	Worcester, Covenant.	
	Worcester, Hope.	
	Worcester, Belmont.	—21
1891	(nearly three months).	
	Belchertown.	
	Berkley.	
	Boston, <i>Roslindale</i> .	
	Duxbury.	
	Longmeadow, <i>East</i> .	
	Lunenburg.	
	Millbury, Second.	
	Plymouth, Fourth, <i>Chiltonville</i> .	
	Wellesley.	9

APPENDIX B.

FROM CHAPTER 115 OF THE PUBLIC STATUTES.

SECTION 7. The corporation may hold real and personal estate, and may hire, purchase, or erect suitable buildings for its accommodation, to an amount not exceeding five hundred thousand dollars, to be devoted to the purposes set forth in its agreement of association, and may receive and hold in trust or otherwise funds received by gift or bequest to be devoted by it to such purposes.

SECT. 13. . . . The commissioner shall examine the certificate and evidence of organization, and, if it appears that the provisions of law have been complied with, shall certify that fact and his approval of the certificate by indorsement thereon. The secretary of the Commonwealth, upon payment of a fee of five dollars and upon the deposit in his office of said certificate with the indorsement thereon, shall cause the same to be recorded, and shall issue a certificate.

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The secretary shall sign the same, and cause the seal of the Commonwealth to be thereto affixed, and such certificate shall be conclusive evidence of the existence of such corporation at the date of such certificate. The secretary shall also cause a record of such a certificate to be made, and a certified copy of such record may be given in evidence with like effect as the original certificate.

APPENDIX C.

To the members of the Church in
You are hereby notified that a meeting of the
resident members of said church, of twenty-one
years of age and upwards,
for the purpose of organizing said
church into a corporation, by the adoption of By-
Laws and election of officers
and the transaction of such other business as may
properly come before the meeting, will be held
on the day of at
o'clock, M., at their usual place of worship.

One of the members of said church.

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I certify that I have served the foregoing notice by posting a copy thereof in a conspicuous place near one of the principal entrances of the usual place of meeting of said church fifteen days at least before the day fixed for the said meeting.

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Subscribed and sworn to,
Before me,
Justice of the Peace.

APPENDIX D.

We,

being a majority of the standing committee* of
in compliance with the requirements of
the fifth section of chapter four hundred and four
of the acts of the year eighteen hundred and
eighty-seven, do hereby certify that pursuant to
a notice duly issued and posted in accordance
with the requirements of said chapter, said
church heretofore existing was duly organized
into a corporation by the election of officers and
the adoption of By-Laws.

The name of the corporation is

The purpose for which the corporation is con-
stituted is the establishment and maintenance of
the public worship of God, in accordance with
the principles and doctrines of the

The place within which the corporation is
established or located is the
of within the Commonwealth of Massa-
chusetts.

The meeting for the organization of said cor-
poration was held on the day
of in the year eighteen hundred and

IN WITNESS WHEREOF, we have hereunto
set our hands, this day of
in the year eighteen hundred and

COMMONWEALTH OF MASSACHU- SETTS.

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Then personally appeared the above-named
and severally made oath that the foregoing cer-
tificate, by them subscribed, is true to the best of
their knowledge and belief.

Before me,

Justice of the Peace.

*See page 6